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Attorneys for Plaintiff A

Attorneys for Plaintiff Anna Lou Woo,
on behalf of herself and all others simi-

on behalf of herself and all others similarly situated

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALIA LOH WOO, on behalf of herself
and all others similarly situated,

) Case No. 07 -CV-0202 H (POR)

CLASS ACTION

**DECLARATION OF ISAM C.
KHOURY IN SUPPORT OF
MOTION FOR AN AWARD OF
ATTORNEYS' FEES, COSTS,
ENHANCEMENT, AND CLAIMS
ADMINISTRATION EXPENSES**

Plaintiffs,

v.

**THE HOME LOAN GROUP, L.P.
CHASE VENTURES HOLDINGS, INC.
a New Jersey Corporation.**

Defendants.

,,) DATE: August 18, 2008

TIME: 10:30 a.m.

) DEPT: 13

{ Filed: January 31, 2007

Trial Date: None Set

1 I, ISAM C. KHOURY, declare as follows:

2 1. I am a partner with the law firm of Cohelan & Khoury, co-counsel of
 3 record for Plaintiff and the putative class in this matter. I am duly admitted to
 4 practice before all the courts of the state of California. The following facts are
 5 within my personal knowledge and if called to testify I could and would
 6 competently testify thereto.

7 2. I am a 1973 Hastings School of Law graduate and was admitted to
 8 the California State Bar in 1974.

9 3. Since admission to the California State Bar, I have been in continuous
 10 practice for over 33 years. My main areas of practice have included class action,
 11 wage and hour, business torts and civil tort litigation. I have handled literally
 12 thousands of civil cases since my admission to practice. Over the years, I have
 13 tried many civil actions, both jury and non-jury to verdict. I routinely engage in
 14 extensive and detailed legal and evidentiary dialogues with opposing counsel that
 15 often leads to case settlement.

16 4. In 1981, my partner, Timothy D. Cohelan, and I formed Cohelan &
 17 Khoury, a Partnership of Professional Law Corporations and within a few years
 18 began to focus on class actions. Our firm represents plaintiffs in complex and class
 19 action litigation, including wage and hour, labor and employment, antitrust,
 20 consumer protection, construction defect and other public interest class actions.

21 5. Our firm is an accredited MCLE provider on class action law, and
 22 Managing Partner Michael D. Singer regularly participates as an MCLE seminar
 23 presenter, particularly on wage and hour class action issues. My partner, Timothy
 24 D. Cohelan, is the author of *Cohelan on California Class Actions* (1997-2007
 25 Thomson West), part of Thomson West's Expert Series. Mr. Singer is a contributor
 26 to the Los Angeles Daily Journal on class action and employment issues and
 27 regularly contributes amicus curiae briefs on employment issues for the California
 28 Employment Lawyers Association. Mr. Singer argued on behalf of California

1 Employment Lawyers Association (“CELA”) in the *National Steel and*
 2 *Shipbuilding Company v. Superior Court* (2006) 135 Cal.App.4th 1072, and, on
 3 behalf of CELA, submitted an amicus curiae brief in *Murphy v. Kenneth Cole*
 4 *Productions, Inc.*, (2005) 134 Cal.App.4th 728; The *Murphy* decision ((2007) 40
 5 Cal. 4th 1094) was issued on April 16, 2007, finding in favor of a three-year statute
 6 of limitations.

7 6. As a part of our overall firm philosophy lawyers perform community
 8 service and pro bono work. Firm volunteer work includes service through our local
 9 volunteer lawyer program (SDVLP) and Voices for Children. Last year Timothy
 10 D. Cohelan completed 24 years of volunteer judicial service as a Judge Pro Tem of
 11 the San Diego Superior court. More recent pro bono victories include a settlement
 12 with the City of San Diego which prohibited the City from targeting homeless
 13 persons for illegal lodging tickets under Penal Code Section 467(j). (*Spencer v.*
 14 *City of San Diego*, USDC Case No 04CV-2314 BEN (WMC).) Associates are
 15 encouraged to perform pro bono legal services. For example, Kimberly D. Neilson
 16 participated in a class action trial advocating on behalf of low-income tenants for
 17 local rent control ordinance violations in which resulted in a verdict on the tenants'
 18 behalf. She also has been an active member of Lawyers Club of San Diego having
 19 served as a committee member and as a volunteer for the annual Women's
 20 Resource Fair and devotes approximately 15 hours each month volunteering and
 21 advocating on behalf of San Diego County foster youth with Voices for Children,
 22 the local affiliate of Court Appointed Special Advocates. Christopher A. Olsen
 23 works with the Short Foundation Legal Center, representing indigent people who
 24 are resisting the County's efforts to place them under a County Mental Health
 25 Conservatorship. Alexander A. Dychter volunteers his time to the San Diego
 26 Volunteer Lawyers program.

27 7. Cohelan & Khoury has recognized expertise and experience in efficient
 28 class action adjudication and resolution. Within the last five years, Cohelan &

1 Khoury has played a central role in the resolution of the following class action
 2 cases which have received final approval by the Court: *Mayville, et al. v. Kor*
 3 *Hotel Group, L.L.C.*, United State District Court Case No.CV04-8461 [rest and
 4 meal period claims for hotel employees], *Higgins, et al. v. Kohl's Department*
 5 *Stores, Inc., et al.*, San Diego County Superior Court Case No. GIC832853
 6 [consumer claims relating to sweepstakes contest], *Miller v. Men's Wearhouse, Inc.*,
 7 Orange County Superior Court Case No. 03CC00132 [overtime misclassification
 8 claims by retail managers], *Erickson, Maddox v. Bath & Body Works.*, San Diego
 9 Superior Court Case No. GIC823899 [rest and meal period claim by retail
 10 employees], *Seautelle v. Tuesday Morning, Inc.*, San Diego Superior Court Case
 11 No. GIC822747 [meal period claim by retail employees], *Lynch v. Matrix Direct,*
 12 *Inc.*, San Diego Superior Court Case No.GIC834808 [overtime misclassification
 13 claim by insurance salespeople]; *Hogue v. WH Smith of Nevada Inc., et al.*, San
 14 Diego Superior Court Case No. GIC830653 [rest, meal, and off-the-clock claims by
 15 retail employees], *Robles v Del Taco, Inc.*, Orange County Superior Court Case
 16 No.03CC00529 [rest, meal, and off-the-clock claims by restaurant employees],
 17 *Montano v. Nextel of California, Inc.*, Orange County Superior Case No.
 18 03CC04391 [expense reimbursement claim by commission employees], *Holden v.*
 19 *Volume Services of America*, Orange County Superior Court Case No.03CC00191
 20 [rest and meal period claim by concessionaires], *AT&T WIRELESS COMMISSION*
 21 *CASES*, Santa Clara Superior Court Case No. JCCP 4337 [wage deduction claim
 22 by commission employees], *Miles v. Kaiser Foundation Hospitals*, Los Angeles
 23 Superior Court Case No. BC 343535 [OT misclassification claim by IT employees],
 24 *Bates v. Haralambos*, Los Angeles Superior Case No. BC329787 [rest and meal
 25 period claim by delivery drivers], *Bennett v. Countrywide*, San Diego Superior
 26 Court, Case No. GIC840981 [expense reimbursement claim by commission
 27 employees], *Hayhurst et al., v. Barclays Global Investors USA, Inc.*, San Francisco
 28 Superior Court, Case No. CGC 05-443473 [OT misclassification claim by IT

1 employees], *Mabry v. Pete's Connection*, Orange County Superior Court, Case No.
 2 04CC00509 [OT claim by installers]; *Tayrien v. U.S. Foodservice, Inc.*, Orange
 3 County Superior Court, Case No. No. 05CC00023 [OT claim by office personnel],
 4 *Lawrence, Vierling v. Robinsons-May, Inc.*, San Diego Superior Court, Case No.
 5 GIC 863727 [rest and meal period claim by retail employees], *Ryberg, Schmidt v.*
 6 *Applebee's International, Inc.*, San Diego Superior Court Case No. GIC 854304
 7 [[OT misclassification claim by restaurant managers], *Shriver, et al. v. M.A.C.*
 8 *Cosmetics*, United States District Court Case No. SACV 06-601 [OT
 9 misclassification claim for retail managers and rest and meal period claim for
 10 hourly retail employees], *Huang v. SBC Services, Inc., et al.*, United States District
 11 Court Case No. 06-CV-2238 [OT misclassification claim by IT employees],
 12 *Clark, et al. v. Michaels Stores, Inc.*, United States District Court, Southern
 13 District of California, Case No. 05-CV1678 [rest and meal period claim by retail
 14 employees], and *Chiaramonte v. Pitney Bowes, Inc.*, United States District Court,
 15 Southern District of California, Case No. 06-CV1507 [expense reimbursement
 16 claim by commission employees], among others.

17 8. I was one of the lead attorneys on this matter, having investigated and
 18 evaluated the class claims for failure to fully reimburse business-related expenses
 19 incurred by these putative class members in furtherance of Defendant's business
 20 and, reviewed and analyzed documents and data produced by Defendant, prepared
 21 the mediation brief and attendant exhibits, and attended and participated in the
 22 mediation on November 16, 2007.

23 9. The Parties have negotiated a maximum settlement amount of
 24 \$500,000, on behalf of the class of 134 current and former employees of
 25 Defendants employed as Loan Officers in the State of California during the Class
 26 Period.

27 10. Class Counsel is convinced that this settlement is in the best interest of
 28 the class based on the negotiations and a detailed knowledge of the issues present

1 in this action. Specifically, Class Counsel balanced the terms of the proposed
 2 settlement against the probable outcome of class certification, summary judgment,
 3 liability and the range of recovery at trial.

4 11. As a result of the Class Counsel's efforts, **38% (51 of 134)** of the
 5 Class have returned valid and timely claim forms.¹ These Participating Class
 6 Members' work weeks represent **42%** of all weeks worked by the Class. These
 7 Participating Class Members claim **42%** of the Net Settlement Amount, or rather
 8 **\$126,383.88**. Without a single objection or any request for exclusion filed, Class
 9 Counsel submit that the class has embraced the settlement

10 12. Pursuant to the terms of the settlement, Class Counsel now
 11 respectfully move for an award of attorneys' fees in the sum of \$150,000 (30%)%
 12 of the settlement fund, litigation costs of \$13,099.14, Class Representative
 13 Enhancement award of \$7,500 to Named Plaintiff/Class Representative Alia Loh
 14 Woo, and claims administration fees and expenses to the appointed claims
 15 administrator, Administar, LLC of \$15,221.47.

16 13. Class Counsel submits the fee request is fair and reasonable in light of
 17 the benefits of providing compensation for business-related expenses, ensuring
 18 future benefits for proper compliance with California law with respect such
 19 reimbursement claims, the substantial hours and efforts expended by Class
 20 Counsel, the litigation risks and complexity of the case, the experience of counsel,
 21 and the fees commonly awarded in cases of this type. Class Counsel's request is
 22 predicated on the extensive lawyering by experienced Class Counsel that resulted
 23 in a settlement less experienced counsel likely could not have reached

24 14. This class action was filed more than 17 months ago, and for Class
 25 Counsel, the fees were wholly contingent in nature, and Class Counsel's attention
 26

27 1 For details pertaining to the Class' participation and the claims process, see the
 28 Declaration of Jonathan Jocson, for claims Administrator, Administar, LLC., in support of
 Plaintiff's Motion for Final Approval of Class Action Settlement, filed concurrently herewith.

1 to this difficult case was undertaken in lieu of work on other cases. To properly
2 handle and prosecute active class action litigation such as this case, Cohelan &
3 Khoury, as well as myself are often precluded from accepting or working on other
4 potential fee-producing cases, due to the attention and requisite work to
5 successfully handle these cases. Cohelan & Khoury's attention to this difficult case
6 was undertaken in lieu of work on other cases. Cohelan & Khoury takes these
7 cases purely on a contingent fee basis, paying all costs in advance, at considerable
8 risk with the ultimate result open to question. Practicing in this area of law involves
9 a great deal of risk as these cases are subject to demurrer and summary judgement,
10 can be lost at class certification hearings, on the merits, or on appeal. We are
11 almost always dealing with the top law firms in the country who represent the
12 defendants in these cases. Due to the high stakes involved, and the continuing
13 uncertainties in the wage and hour area of law, these cases are always hotly
14 contested and vigorously litigated. This case was no exception.

15 15. These cases require the constant engagement of my firm members
16 from inception to resolution. Extensive work is required to obtain information
17 from large groups of employees, to conduct independent investigations to locate
18 and interview potential witnesses to establish common treatment to support class
19 certification, to support liability, to maintain contact with class representatives, and
20 others and to distribute and disseminate information to facilitate the litigation and
21 resolution of the case on a regular basis. Extensive written and oral formal
22 discovery and motion work is also required in these cases, as well as the necessary
23 work to support class certification, and then to prepare for trial.

24 16. The risks in taking on a class action case are enormous. Litigating a
25 wage and hour class action through certification, and then trial takes years and
26 requires the investment of thousands of dollars. Costs in the present case did not
27 reach that level, but attorneys willing to undertake this risk deserve appropriate
28 compensation. Cohelan & Khoury and Michael J. Procopio have incurred costs of

1 approximately \$13,099.14 in this case, true and correct copies of a summary of
2 costs and Cohelan & Khoury's itemized costs are attached hereto as Exhibit "A".

3 17. Class Counsel has not yet received any fees in this case and has
4 advanced all costs. By contrast, Defendants' firms are able to bill their clients on a
5 monthly basis and regularly receive payment.

6 18. Class Counsel expended many hours litigating this case. Once
7 discussions were initiated regarding the possibility of settlement, the parties agreed
8 to stay formal discovery. Plaintiff informally requested documents from
9 Defendants and Defendants produced several hundred pages of documents which
10 included Defendants' policies and procedures manuals and handbooks,
11 compensation policies, employee handbook, policy statements, incentive plans, and
12 various addendum, for the relevant time period. Defendants also produced a
13 spreadsheet containing data which reflected class members' business- related
14 expenses and amounts actually reimbursed. Plaintiff's counsel and her consultant
15 reviewed and analyzed the records and based on that evaluation believed that
16 Defendants failed to fully reimburse business expenses incurred by Class members
17 as required by the Labor Code.

18 19. In addition, Class Counsel conducted informal interviews of other
19 material witnesses, conducted other forms of investigation during the prosecution
20 of this case, analyzed the potential class-wide damages, and researched the
21 applicable law with respect to the claims asserted in the Complaint and Defendants'
22 affirmative defenses and other potential defenses.

23 20. Many courts have awarded attorneys fees 30% or greater of the
24 settlement amount:

- 1 C. *Van Gemert v. Boeing Co.* (S.D.N.Y. 1981) 516 F. Supp.412 (awarded
 2 36%);
 3 D. *In Re Crazy Eddie Securities Litigation* (E.D.N.Y. 1993) 824 F.Supp.
 4 320 (awarded 33.8 %);
 5 E. *Antonopoulos v. North American Thoroughbreds, Inc.* (S.D. Cal. 1991)
 6 Fed. Sec. L. Rep. (CCH), ¶ 96,058 (awarded 33 1/3%);
 7 F. *Cullen v. Whitman Medical Corp.* (E.D. Pa. 2000) 197 F.R.D. 136
 8 (awarded 33 1/3%);
 9 G. *In Re Pacific Enterprises Securities Litigation,*
 10 (1995 U.S. App. LEXIS 2330) 47 F.3d 373 (awarded 33 1/3%);
 11 H. *In Re Safety Components International, Inc.* (D.N.J. 2001) 166
 12 F.Supp.2d 72 (awarded 33 1/3%);
 13 I. *Morris v. Lifescan, Inc.*, (9th Cir. 2003) 54 Fed. Appx. 663 (awarded
 14 33%);
 15 J. *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F. Supp.
 16 1373 (awarded 32.8%); and
 17 K. *Clark, et al. v. Michaels Stores, Inc.*, United States District Court for
 18 the Southern District of California, Case No. 05-CV1678(2007)
 19 (awarded 30%);.

20 21. With regard to the requested enhancement, and based on our
 21 experience working with Ms. Woo, and from what I have seen awarded in other
 22 cases, I believe the Class Representative Enhancement request of \$7,500 is both
 23 fair and reasonable.

24 22. Ms. Woo made numerous telephone calls to and answered questions
 25 from Class Counsel who required considerable information pertaining to
 26 Defendants' policies and procedures for business-related expense reimbursement.
 27 Ms. Woo has always been available to respond to Class Counsel's inquiries. Ms.
 28 Woo also flew from San Francisco to San Diego to attend the Early Neutral

1 || Evaluation Conference.

2 23 Ms. Woo was involved in the settlement process. Although not
3 attending the mediation, Ms. Woo was available by phone throughout the entire
4 day and advised Class Counsel on circumstances relevant to settlement
5 considerations, understood, and gave her approval to the proposed settlement. In
6 addition, Ms. Woo provided numerous documents which were provided to
7 Defendants and facilitated a meaningful mediation and eventual settlement.

8 24. Class Counsel have settled numerous other similar class actions where
9 such enhancements were awarded, including, for example, enhancements in pre-
10 certification settlements of \$35,000 in a failure to reimburse business-related
11 expenses employment, \$30,000 in four other cases, and \$25,000, \$20,000, \$15,000,
12 \$10,000, \$7,500, and \$5,000 per class representative in numerous other
13 employment cases.

14 I declare under penalty of perjury under the laws of the State of California
15 that the foregoing is true and correct and that this Declaration was executed on July
16 16, 2008 at San Diego, California.

/s/ Isam C. Khoury
ISAM C. KHOURY

1 TABLE OF EXHIBITS
2 Exhibit
3 A. Cost Summary & Itemization of Costs
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EXHIBIT A
[COSTS SUMMARY & ITEMIZATION]

Woo v. The Home Loan Group, L.P., et al.
U.S.D.C. Case No. 07CV0202 H (POR)
Declaration of Isam C. Khoury in Support of
Motion for an Award of Attorneys' Fees, Costs,
Enhancement, and Claims Administration
Expenses

SUMMARY OF COSTS:

Woo v. The Home Loan Group, L.P., et al.

U.S.D.C. Case No. 07CV0202 H (POR)

COSTS ADVANCED

COHELAN & KHOURY		\$ 9,262.14
KINGSLEY & KINGSLEY		\$ 3,837.00
	TOTAL COSTS:	\$ 13,099.14

COHELAN & KHOURY
A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

ATTORNEYS AT LAW

TIMOTHY D. COHELAN, * APLC
 ISAM C. KHOURY, APC
 DIANA M. KHOURY
 MICHAEL D. SINGER *

(*Also admitted in the District of Columbia)
 (- Also admitted in Colorado)
 († Also admitted in Illinois)

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 KIMBERLY D. NEILSON
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Summary of Costs

Woo v. JP Morgan (Chase)

7/14/07

1/30/07	Clerk of Court	Filing Fee	350.00
2/8/07	Janney & Janney	SOP: JP Morgan Chase Bank, Inc.	45.00
2/27/07	Clerk of Court	Filing Fee	40.00
3/31/07	Lexis Nexis	On-Line Research	1.47
6/1/07	Janney & Janney	SOP: The Home Loan Group, LP	20.00
6/1/07	Janney & Janney	SOP: The Home Loan Group, et al	80.00
7/12/07	Mark S. Rudy, APC	Mediation Fee (11/16/07)	2250.00
7/31/07	Lexis Nexis	On-line Research	28.53
10/10/07	Southwest Airlines	Client Alia Woo (SF-SD) Hearing (So. District Ct.)	282.80
10/22/07	Southwest Airlines	Flight for MDS (SD-OAK) 11/16 Mediation	282.80
10/22/07	Southwest Airlines	Flight for ICK (SD-OAK) 11/16 Mediation	282.80
11/1/07	Southeast Airlines	Flight for TC (SD-OAK) 11/16 Mediation	271.80
11/15-16	Isam Khoury	Hotel SF (TC/MDS/ICK)	1566.75
11/7/07	Phillips Fractor Gorman	Consulting	3174.00
	In House	Photocopies (2,170 pages@ .25 per page)	542.50
	In House	Facsimile (20 pages @\$1.00 per page)	20.00
	In House	Postage	11.11
	In House	Telephone	12.58
	Total		9,262.14